

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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RUSSELL YEAGER,

Plaintiff,

v.

JAMES G. COX, et al.,

Defendants.

Case No. 2:13-cv-01358-MMD-PAL

ORDER

(Mtn to Appoint – Dkt. #2)
(IFP App – Dkt. #4)

This matter is before the court on Plaintiff Russell Yeager’s Motion for Appointment of Counsel (Dkt. #2) and Application to Proceed In Forma Pauperis. Plaintiff is a former prisoner proceeding in this action pro se. Plaintiff has submitted the financial affidavit and inmate trust account statement required by 28 U.S.C. § 1915(a)(2). His request to proceed in forma pauperis would ordinarily be granted pursuant to 28 U.S.C. § 1915(a).

However, Plaintiff has filed a “Notice of Appeal,” which the court construes as a complaint seeking judicial relief. By this action, Plaintiff seeks to appeal an order entered July 23, 2013 in the Nevada Supreme Court denying his request for a re-hearing. He asserts that he is “appealing the final order of the Nevada Supreme Court to the next level of review.” *See* Notice of Appeal (Dkt. #1).

As a general matter, federal courts are courts of limited jurisdiction and possess only that power authorized by the Constitution and statute. *See Rasul v. Bush*, 542 U.S. 466, 489 (2004). Plaintiff has not alleged federal jurisdiction exists in this case. No federal question jurisdiction pursuant to 28 U.S.C. § 1331 exists. Plaintiff has also not invoked the court’s diversity jurisdiction pursuant to 28 U.S.C. § 1332. Plaintiff has not identified any statutory source to support appellate jurisdiction in this court. If Plaintiff wishes to have a higher court review the

1 decision by the Nevada Supreme Court, he must petition the United States Supreme Court to
2 hear his case. 28 U.S.C. § 1257(a) provides that “[f]inal judgments . . . rendered by the highest
3 court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ
4 of certiorari.” *Id.* This court does not have appellate jurisdiction to review the Nevada Supreme
5 Court’s decision.

6 If the court grants Plaintiff’s Application to Proceed In Forma Pauperis, Plaintiff will be
7 required, under 28 U.S.C. § 1915(b)(2), as amended by the Prison Litigation Reform Act of
8 1995, to pay the full \$350 filing fee, even if his complaint is dismissed. As set forth above, the
9 court does not have jurisdiction to grant the relief Plaintiff requests. The court will allow
10 Plaintiff thirty days to withdraw his Application to Proceed In Forma Pauperis. If Plaintiff does
11 not, the court will grant his Application to Proceed In Forma Pauperis, screen Plaintiff’s
12 motion/complaint, and order that he pay the \$350 filing fee in accordance with 28 U.S.C. § 1915.

13 Additionally, the court will deny Plaintiff’s Motion to Appoint Counsel, without
14 prejudice. If Plaintiff chooses to proceed in this action, he may re-file that motion when and if
15 the court finds he has stated a federal claim upon which relief can be granted.

16 Based upon the foregoing,

17 **IT IS ORDERED** that:

- 18 1. Plaintiff’s Application to Proceed In Forma Pauperis (Dkt. #4) is HELD IN
19 ABEYANCE.
- 20 2. Plaintiff shall have thirty days from the entry of this order to withdraw his
21 Application to Proceed In Forma Pauperis. If he does not, the court will screen the
22 complaint/Notice of Appeal pursuant to 28 U.S.C. § 1915, recommend dismissal for
23 lack of jurisdiction, and order Plaintiff to pay the \$350 filing fee.

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3. Plaintiff's Motion to Appoint Counsel (Dkt. #2) is DENIED WITHOUT PREJUDICE.


PEGGY A. TEEN
UNITED STATES MAGISTRATE JUDGE